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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,546	08/08/2000	Nimrod Megiddo	AM9-99-0239	5606

26381 7590 12/01/2003

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EXAMINER

LE, DAVID Q

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/634,546

Applicant(s)

MEGIDDO, NIMROD

Examiner

David Q Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,21 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-16, 21, 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Examiner's Note

1. The Examiner has pointed out particular references contained in the prior art of record in the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claims, other passages and figures apply as well. It is requested from the Applicant, in preparing the response, to consider fully the entire references as well as the context of all passages in the cited references as potentially teaching all or part of the claimed inventions.

Status of Claims

2. Per the Amendment filed 10 September 2003:

Claims 2, 17-20, and 22 have been cancelled.

Claims 1, 3, 12, 21, 23-24, and 26-27 are amended.

Claims 1, 3-16, 21, and 23-28 remain pending.

Response to Request for Reconsideration

3. The request for consideration filed on 10 September 2003 under 37 CFR § 1.111 has been considered but is ineffective to overcome the references.

Response to Arguments

4. Applicant's arguments have been fully considered but they are not persuasive:

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In regards to Applicant's argument that Gershman does not teach using a sophisticated user profile in order to obtain better pricing: Gershman's Fig. 11-13 and their associated text (also cited in Office Action) clearly teaches that multiple user personas, as well as user profiles, are created, developed, maintained, and used multiple times – in an anonymous fashion – to obtain the best, most personalized products, services and prices for the users.

Additionally Applicant recites a list of claimed features and argues that Gershman does not disclose, teach, or provide them. Examiner disagrees with this reading of Gershman, and respectfully asks that Applicant review the citations that were provided from the reference, each directed to a specific limitation of the claims. It is clear from those citations that Gershman discloses or teaches all of the features/limitations cited in the Amendment.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1, 7, 9-12, 16, 21, 26-28** are rejected under 35 U.S.C. 102(e) as being anticipated by **Gershman et al.**, US Patent 6,199,099.

As per **claims 1 and 27**

Gershman discloses

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A system [article of manufacture...] for enhancing price discovery of products available in electronic commerce (Abstract; Summary of the Invention; Fig 1-1A, 9, associated text), wherein said system comprises:

one or more automated surveyors for surveying a plurality of posted prices, bid prices, posted quotes, quoted prices, and auctions (Fig 9, associated text; C28, L64 – C29, L53; C29, L56 – C30, L27; C56, L1 – C57, L11: "Shopper's Eye");

an anonymous buyer profile, said anonymous buyer profile used multiple times to develop historical usage therefor (Fig 13; associated text; C32-33: "User Persona"), said historical usage representing a sophisticated buyer and included within at least one of said one or more automated surveyors (Fig 12-14, associated text: C32, L7 – C33, L50: "User Persona"), said sophisticated buyer used as the buyer by said automated surveyors, and

wherein use of said anonymous buyer profile increases the probability of discovering the best prices in an electronic commerce environment which includes electronic price discrimination (Fig 10A-11, associated text: C30, L29 – C32, L6: "Egocentric Interface").

As per **claim 12.**

Gershman discloses

A method for enhancing buyers' performance in electronic commerce (Abstract, Summary of the Invention), wherein said method comprises:

electronically presenting information to sellers located across a network about sophisticated buyers (Fig 17, associated text; C34, L58 – C35, L7; C35, L8-11) who are not willing to pay more than a minimum price, said sophisticated buyers developed by historical use of anonymous buyer profiles;

using said sophisticated buyers to electronically gather information about prices on a network (Fig 9, associated text; C28, L64 – C29, L53; C29, L56 – C30, L27; C56, L1 – C57, L11: "Shopper's Eye"), and

indicating to sellers when they are competitive, and influencing them to lower prices (C57, L4-7: Negotiation of Offers").

As per **claims 7, 21, 28.**

Gershman further discloses

generating/choosing one of a plurality of available fictitious names; requesting price quotes [located across a network] on behalf of said chosen fictitious names; storing all received quotes, and maintaining statistics about said stored received quotes for reference to future buyers using said system (Fig 15-16, associated text; C33, L51 – C34, L42).

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As per claim 9.

Gershman further discloses

... potential buyers receive messages of prices discovered by any of e-mail, regular mail, or faxes
(Fig 1A, 17, associated text).

As per claims 10, 26.

Gershman further discloses (C56, L46 – C57, L3: "Specification of Goals, Refinement of Preferences, Identification and Comparison of Candidate Products").

...probing a commercial site with varying parameters associated with the price of at least one product;
uncovering the underlying fee structure and how it varies with respect to different parameters,
and
suggesting to a potential buyer what parameters can be changed to save money.

As per claims 11, 16.

Gershman further discloses

... said network includes any of the: Internet, WWW, wireless web, LAN or WAN (Summary of the Invention).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 5, 8, 13, 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gershman.

As per claim 5.

Gershman does not specifically disclose

...collecting information about wholesale prices; generating reference points, and assessing from said reference points whether a posted price is reasonable.

However Gershman teaches that software agents may be programmed to scan, track, store, and process a multitude of successive price quotes from the Internet, from which personalized reports and alerts may be generated for the system's users (see above citations). In order for such agents to provide "intelligent" or "reasonable" purchasing advice to their users, a system built according to Gershman's teachings, therefore, would inherently need algorithms comparing wholesale versus retail, discounted, and special prices, in order to derive the best, or most reasonable prices to present to its users. Viewed in this light, the claimed limitation in these claims is not patentable over Gershman.

As per claims 8, 13, 24.

Gershman does not specifically disclose

...promoting competition among sellers by: generating messages to inform sellers of lower prices quoted by their competitors; advising said sellers to consider lowering prices, and maintaining a website, for public viewing, regarding ratings of sellers.

However Gershman does teach that collected information will be available to merchants participating in his system, and that efforts will be made to induce those participating merchants to be competitive (Fig 16-18, associated text). He also teaches that price negotiations may be conducted on behalf of users by their agents (C57, L4-7), and that user ratings of products/merchants would be kept and reported to future users (Fig 16, associated text; C34, L21-42). Therefore it would have been obvious to one ordinarily skilled in the art at the time the invention was made that all the limitations cited in these claims (e-mailing merchants price fluctuations, negotiating quotes, posting vendor ratings on a web page) would need to be implemented, in order to provide the strongest motive for sellers and buyers alike to participate in the system.

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As per claim 25.

Gershman further discloses

... potential buyers receive messages of prices discovered by any of e-mail, regular mail, or faxes (*Fig 1A, 17, associated text*).

9. Claims 3-4, 14-15, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gershman in view of Webvan (http://web.archive.org/web/*/http://www.webvan.com),

As per claims 3, 14.

Gershman discloses all the limitations of claims 2 and 12.

Webvan (<http://www.wired.com/news/business/0,1367,45098,00.html>) carried the personalized shopping experience further (went public in late 1999), providing groceries to registered users and delivering the purchases to the users' doors.

While neither reference specifically recite

...developed anonymous buyer profile is used to make actual purchases for a buyer.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have combined Gershman's invention (where users' profiles are kept) with Webvan's service (where actual purchase and delivery of products is performed) in order to provide additional services to potential customers, thereby increasing the appeal of the system. With the combined features, the system can deliver personalized, custom products to each user, and as such, would meet all the limitations of claims 3 and 14.

As per claim 4, 15, 23.

Gershman in view of disclose all the limitations of claims 3, 14, 17.

Webvan further provided a delivery service to buyers using their system (see above Webvan citation).

While neither reference specifically recite

...when said system makes actual purchases for a buyer it further includes: receiving purchased at least one item at a site owned by system operator or a third party, and shipping at least item to said buyer.

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It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have combined Gershman's invention (where users' profiles are kept) with Webvan's service (where orders are delivered to users) in order to provide additional services to potential customers, thereby increasing the appeal of the system. With the combined features, the system can deliver personalized, custom products to each user, and as such, would meet all the limitations of claims 4, 15 and 23.

10. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Gershman** in view of **MySimon** (<http://web.archive.org/web/19981203074304/http://www.mysimon.com/>)

Gershman discloses all the limitations of claim 1.

MySimon (<http://web.archive.org/web/19981203074304/http://www.mysimon.com/> - Corporate Info page) further discloses

scanning continuously commercial sites on a network; extracting posted quotes from said sites; maintaining a database of posted quotes, and pointing a buyer to vendors that post a best price based on said posted quotes for an item the buyer is interested in.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have incorporated the services offered by MySimon into Gershman's invention, in order to provide added value to potential users: now instead of just being to shop in a mall or close-by geographical area, users can have the system's agent browse the world wide web and report back on the best prices. Such a system would be very attractive to users, and would meet all the limitations of claims 6 and 19.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

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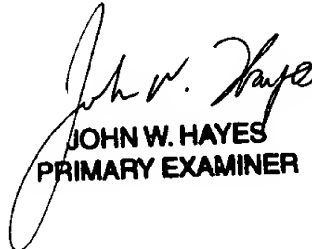
of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Q Le whose telephone number is 703-305-4567. The examiner can normally be reached on 8:30am-5:30pm Mo-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

DQL


JOHN W. HAYES
PRIMARY EXAMINER